Medical malpractice settlements: who benefits?

By Bruce G. Fagel

Protecting the public health is a critically important function of government. Compromising donors or new drugs that can impact large numbers of people are the focus of organizations with controlled authority and broad investigatory powers. The CDC or FDA, however, when it comes to protecting the health of individual patients, there is an ad interim authority. The protection of patients in hospitals is left to a voluntary organization, the Joint Commission, which accredits hospitals as a condition to receive Medicare funds. The evaluation and licensing of physicians is left to individual state medical boards. These state boards, in turn, allow the National Board exam to serve as the primary method of certifying the competence of all physicians who graduate from American or Canadian medical schools. Graduates of foreign medical schools take a similar exam administered by a national certifying board.

Once licensed, it is upon each individual state medical board to determine if a physician's license should be renewed. Almost all actions by a state medical board, every physician is automatically renewed for his license by paying a fee and satisfying a specified number of hours of continuing medical education (CME), but the nature of each CME is left unspecified and often has no relation to the physician's actual practice. Most, but not all, physicians will obtain a certification from one or more specialty subboards, and many, but not all, of the specialty boards require a re-certification every 10 years.

These doctors can avoid public reporting scrutiny because claims against them can be settled without reports being made to either the Medical Board or the NPIRB. The requirement that any payment must be reported to the National Practitioner Date Bank is often a greater concern to many factors, because hospitals and insurance companies are required to report the Data Bank when entering into contracts with physicians or providing privileges to practice at a hospital. Protection of patients is the primary public policy reason for the reporting requirements at both the state and national level, however, the requirement that a doctor must consent to settle, and therefore expose themselves to a public record of their actions will often prevent a settlement that will serve the best interest of the harmed patient or family of a patient who died as a result of medical malpractice.

Even when physicians are found to be negligent, the physicians involved in the medical case may deny the allegations. In a recent case, a patient was found to be negligent, the physician in question was not found to be negligent, and the patient was awarded a large settlement.

In the 100 days when judges were involved in the settlement of cases in court, the evidence is that 30 percent of all such cases will settle before trial, whereas less than 5 percent proceed to trial, with as many as 90 percent of these cases resulting in defense verdicts. Thus, settlements that require the consent of the defendant physician represent the primary endpoint resolution of most medical malpractice cases that result in independent payment.

Penelope Benefits and Penelope Code Section 808, any settlement or payment for any other reason must be reported to the Medical Board of California, which may then conduct its own investigation of the case, which can result in action against the physician's license to practice medicine. Although